

### REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the amendments to the claims and the following remarks, is respectfully requested.

Claims 1, 3-13 and 15-24 are pending in this application. Claims 1, 3-5, 11-12, 15-16, 18-19 and 22-24 are amended. Support for the changes to the claims is found throughout the originally filed disclosure, including the original claims and the drawings at least in Figs. 4 and 11. No new matter is added.

In the outstanding Office Action, Claims 1, 3-13, 15-20 and 22-24 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. 6,529,506 (Yamamoto) in view of U.S. 6,414,960 (Kuhn); and Claim 21 was rejected under 35 U.S.C. §103(a) as unpatentable over Yamamoto and Kuhn in view of U.S. 6,446,037 (Fielder).

In the Advisory Action mailed August 30, 2010, the Examiner states that in light of the specification and dictionary definition, audio level data is interpreted as attribute or relative position data related to audio data.<sup>1</sup> The reasons for this interpretation are unclear.

Specifically, “audio level” is a term of art well known to one of ordinary skill. Further, the specification at page 2, line 8 states that the level of an audio signal is a particular example of an attribute of an audio signal. Since the claim recites audio levels, it is unclear as to why the Office has interpreted the claimed audio level as the broader attribute described in the specification.

Further to this point, in the response filed August 3, 2009, the claims were amended to replace the originally claimed “attribute data” as the previously claimed “audio level data.” That same response goes into a detailed description of the claimed audio level features, and more importantly, none of the subsequent Office Actions traversed or challenged Applicant’s position as to the definition of audio level. Therefore, in light of the record, it is respectfully

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<sup>1</sup> Advisory Action, item 5.

submitted that a definition for the claimed audio level that is contrary to how that phrase is understood by those of ordinary skill in the art and further contrary to how the phrase is used throughout the specification and the prosecution history is unreasonable. Nonetheless, the claims are amended to clarify the audio level and audio level data as audio ***volume*** level and audio ***volume*** level data.

As acknowledged in item 5 of the Advisory Action, as noted above, the outstanding rejections rely on an inaccurate interpretation of the previously claimed audio level data. However, since the claims are amended to make it explicitly clear that the audio level data is audio ***volume*** level data, it is respectfully submitted that the interpretation that the audio level data is an attribute or relative position data related to audio data is overcome. Since the rejections in view of Yamamoto rely on such an interpretation, it is respectfully submitted the outstanding rejections in view of Yamamoto are overcome.

Consequently, it is respectfully submitted the outstanding rejections under 35 U.S.C. § 103(a) should be withdrawn and as a result there are no other pending issues in this application. Should the Examiner disagree, the Examiner is encouraged to contact the undersigned to discuss any remaining issues. Otherwise, a timely Notice of Allowance is respectfully requested.

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